

10 December 2013

Mr Phil Wait
President
Wireless Institute of Australia
PO Box 2042
Bayswater VIC 3153

ACMA2012/1199

Dear Phil

Trial of higher transmitter output power by amateur advanced licensees

Thank you for your letter of 23 September 2013 concerning the ACMA's decision not to put in place permanent regulatory arrangements for the use of higher transmitter output power by amateur advanced licensees (higher power). I apologise for the delay in responding.

I appreciate that the WIA is disappointed by the decision and have taken note of your observations in response to my letter of 9 August 2013. In that letter I detailed the findings from the assessment of the higher power trial and the reasons which gave rise to the ACMA's decision. This letter builds on the information I provided, and focuses on the questions you raised about the ACMA's auditing of licensees' compliance, as well as how the ACMA had regard to some of the other trial assessment findings.

Your letter includes six questions about the part of the trial assessment to do with licensees' compliance with Part 3 of the *Radiocommunications Licence Conditions (Apparatus Licence) Determination 2003 (Apparatus Licence LCD)*. The ACMA considers compliance with these licence conditions relating to EME, and indeed all licence conditions, a serious matter and found that the level of non-compliance demonstrated through the trial was unacceptable. As the predominant factor in the ACMA's decision not to continue with higher power arrangements, I agree that it is useful to examine and learn from what was found during the trial. In that light, responses to your questions follow which I hope will assist the WIA with planning for compliance related activities into the future.

Risk & ACMA Desk Audit Methodology

Regarding your first question, while a formal risk assessment was not undertaken, the risk associated with EME non-compliance was certainly at the forefront of the ACMA's consideration and decision making. Noting that amateur licensees can operate in a suburban type environment with neighbours in close proximity, there was concern about the potential for there to be impact on other members of the public. Basically the risk/benefit equation pointed to significant risk that outweighed the potential benefit to the amateur and broader community.

Your second question was about how the ACMA chose the 90 trial participants for its desk-based audit of licensees' knowledge of and compliance with EME requirements. The methodology involved identifying licensees located in high population density areas, with a

spread across the different States in relative proportion to their population. This approach was taken in light of the higher risk associated with licensees operating in high population density areas, which are typically suburban areas. The criteria used to conduct the assessments are those set out in the relevant labelling notice for Compliance Level 1 and Compliance Level 2 installations. Each submission received by the ACMA in response to its audit request was assessed against the answers required for the Compliance Level the licensee had indicated was applicable.

I believe that the audit methodology was appropriate given all the relevant considerations. It was designed to be as robust, impartial and least intrusive as possible. The sample of 90 licensees represents close to one third of the total population of 297 licensees. It therefore provides a solid basis for considering and assessing how trial participants went about operating their stations and using the higher power.

Compliance with Part 3 of Apparatus Licence LCD

Your third question was "what level of compliance from the desk based audit would have been considered acceptable". This question seems predicated on the notion that the ACMA had a predetermined view as to what would be an acceptable level of non-compliance. This wasn't the case. As Part 3 of the Apparatus Licence LCD contains licence conditions to which *all* apparatus licences are subject, I don't see it as appropriate to specify a figure that's "acceptable". Full compliance is what the ACMA would expect to find, particularly in this context where a special authorisation is being trialled. Significantly, given trial participants are highly qualified advanced licensees, I would have expected the level of compliance to be greater than it was.

More than a dozen licensees with whom ACMA staff spoke during the desk audit were unaware that they had an obligation to comply with Part 3 of the Apparatus Licence LCD, even when not using high power. It was also observed that several licensees who were aware of the obligation had nonetheless not taken steps to make sure that they were compliant with Part 3. There were also cases where licensees had apparently misunderstood or misinterpreted EME requirements. This latter point was noted in your letter and I recall we briefly touched on it in our meeting of 5 August 2013. It suggests that there could be improvement in the relevant supporting information and tools that are made available to licensees.

Your fourth question sought further information about the 17 licensees who were found to be non-compliant during the desk-based audit. The main reason for this compliance failure was that licensees incorrectly assessed their station as meeting Compliance Level 1 or 2. Sixteen licensees classified their station incorrectly. One licensee failed to respond entirely and was subsequently classified as non-compliant. A further breakdown of results from the desk based audit is provided in Attachment A.

The majority of the 16 incorrect assessments were traced back to problems with the "tools" available on-line to assist licensees with their calculations for EME compliance. I understand that engagement between the WIA and ACMA compliance staff back in April 2013 resulted in corrections being made to both the WIA's relevant spreadsheet and the ACMA's worksheet that is part of its guide "*Human Exposure to EMR: Assessment of Amateur Radio Stations for Compliance with ACA Requirements*". Feedback from the WIA and licensees during the audit exercise has been instructive and ACMA staff are reviewing the guide and commonly used assessment tools.

With Question 5 you sought further information about the outcome of the ACMA writing to those 17 licensees inviting them to provide new records to demonstrate compliance. The outcome was that:

- Eight licensees did not respond;

- Two licensees responded by commenting on the trial and asking further questions; and
- Seven licensees re-submitted. Of these, two failed initially and one failed three times before submitting paperwork that demonstrated compliance.

This outcome further supports the view that there is a need for improved awareness and understanding of what is involved when it comes to compliance with Part 3 of the Apparatus LCD in particular.

Your sixth question concerned the number of station inspections conducted in relation to the trial, the states involved and what outcomes resulted. As part of the trial assessment, three site audits were initially undertaken in Victoria. These were undertaken with the agreement of each licensee and helped ACMA staff to determine how best to conduct such a site audit. Subsequently, on the basis of a nil return to the ACMA's written request for EME records, one site audit was conducted in South Australia, and three were conducted in Queensland. Each property was located in a high population density area on a suburban block.

There were issues identified at the three Victorian premises which related to public access to antennas and feeder lines. Advice was provided by ACMA staff to the licensees concerned about limiting public access to the premises. The licensee in South Australia advised that although he had obtained the higher power authorisation he had not used it. The three site audits in Queensland did not identify any EME related compliance issues on-site.

Promoting compliance with Part 3 of Apparatus Licence LCD

I welcome the WIA's commitment to developing a communications strategy to improve amateurs' awareness and knowledge of their licence conditions and compliance with EME requirements. The ACMA looks forward to assisting by making sure that relevant ACMA information and resources to assist licensees are accurate and fit for purpose.

Other issues

With regard to other observations in your letter, I wish to further clarify how the ACMA had regard to some of the other trial assessment findings.

The number of trial participants was 297, which was slightly short of the WIA's estimated 400-450 interested amateurs. This of itself was not a significant factor in the ACMA's decision. Rather it was seen by the ACMA as a reflection of the demand for higher power amongst active advanced amateur licensees. While some licensees may have been deterred from participating by having to pay the fee for the licence variation, we found that others did "sign up" without ultimately going on to use the higher power. Overall, I believe that the ACMA's publicising of the trial via the website and our social media *engage site, and the conduct of the trial was appropriate.

The ACMA had no firm expectations on what should or should not be included in the WIA submission. While staff suggested what might be included in the submission - including amongst other things the benefits of the use of higher power - it was for the WIA to submit what it believed would be the most important points for consideration. It was a bit surprising that there was little mention of the broader benefits to the wider community. I say this because it was at odds with earlier correspondence about why enabling higher power use was so important. In any case, this of itself was again not a key determining factor in the ACMA's decision.

Finally, regarding the ACMA's research into existing operating conditions in other countries, your view was that this was too limited in scope. I recall that in its initial approach to the ACMA in October 2010, the WIA raised the issue of permissible power level in other countries. It was therefore considered appropriate to undertake a bit more research on some

other countries' arrangements in this area. The purpose of the desk research was not to undertake a comprehensive audit of overseas requirements, but rather to gain an appreciation of various countries' power limits. I believe this was accomplished with the research showing that there was a range of limits in force - some higher and some lower - and that there is no uniform approach.

In conclusion, I hope that the information provided will assist the WIA. As we have discussed, I think it is important that both the ACMA and WIA look forward now to providing better information and educating licensees about their licence obligations. We look forward to working with the WIA in this regard. If you would like to discuss any of these matters further, please contact Anne Chadwick on 03 9963 6722.

Yours sincerely



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Results of desk-based audit¹

Attachment A

First tranche – 50 letters

Licensee responded within the 20 days timeframe	Licensee requested an extension	Licensee did not respond to the letter	Licensee assessed his or herself as meeting the level one criteria	Licensees inaccurately self assessed as Level 1 instead of Level 2	Licensee is not capable of operating at 1,000 watts with existing equipment
45	5	3	33	7	9

Second tranche – 40 letters

Licensee responded within the 20 days timeframe	Licensee requested an extension	Licensee did not respond to the letter	Licensee assessed his or herself as meeting the level one criteria	Licensees inaccurately self assessed as Level 1 instead of Level 2	Licensee is not capable of operating at 1,000 watts with existing equipment
29	8	6	20	9	9

Note * - One operator failed to respond to all requests for information, and was subsequently counted as non-compliant

¹ These figures are absolutes. A licensee may appear in more than one category; therefore addition and subtraction will not provide a meaningful result.